

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Establishing the Digital Opportunity Data Collection |) | WC Docket No. 19-195 |
| |) | |
| Modernizing the FCC Form 477 Data Program |) | WC Docket No. 11-10 |
| |) | |

**COMMENTS OF ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION
ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**



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I. INTRODUCTION AND SUMMARY

ACA Connects – America’s Communications Association (“ACA Connects”)¹ hereby comments in response to the Federal Communications Commission’s (“Commission’s”) Second Further Notice of Proposed Rulemaking regarding implementation of the Digital Opportunity Data Collection (“DODC”).² ACA Connects supports the Commission’s decision in the *DODC Report and Order* to require fixed broadband providers to submit broadband coverage polygons (“polygons”) of their networks to show where service is available.³ In these comments, ACA

¹ ACA Connects’ membership is made up of nearly 800 small- and medium-size independent operators providing video, broadband, and phone services. See ACA Connects, “About ACA Connects,” available at <https://www.acaconnects.org/about> (last accessed Sep. 23, 2019). ACA Connects’ members serve over 7 million households and businesses, mainly in rural areas. ACA Connects’ members currently file Form 477 reports and will be required to file reports in the Digital Opportunity Data Collection.

² *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (Aug. 6, 2019). The Report and Order (“*DODC Report and Order*”) is contained in paras. 10-75. The Second Further Notice of Proposed Rulemaking (“*FNPRM*”) is contained in paras. 76-135.

³ *DODC Report and Order* at para. 2.

Connects addresses technical and crowdsourcing issues for the new collection raised in the *FNPRM*, as well as issues concerning the potential incorporation of location information into the DODC and the timing to sunset the current Form 477 collection.

ACA Connects believes that the DODC will be most successful and balance the interests of all stakeholders if the Commission works with fixed broadband providers to encourage them to produce high-quality data and respond to issues about those data, as opposed to adopting prescriptive rules and imposing immediate and severe sanctions. This is especially the case for smaller providers that generally lack the resources and capabilities to easily comply with the new collection. ACA Connects thus appreciates that the Commission recognizes that smaller providers may need additional time to report, and it recommends that these providers, which the Commission should define as those with fewer than 1,500 subscribers, should be given an additional six months to report. The Commission also should establish an education and compliance regime that includes, among other things, working with associations like ACA Connects to educate providers, and it should permit providers to file polygons in different file formats, including the KMZ format which can be readily produced from Google Earth at lower cost than other formats. As for enforcement of the collection, ACA Connects recommends the following three stage process: any legitimate complaint alleging a provider has incorrectly identified a single location as served from consumers that reside in the relevant area should be treated like an informal complaint; where there is a critical mass of legitimate complaints that indicate a material and immediate concern about a distinct and similar issue from consumers that reside in the same relevant area, the provider should be given a limited time to review the complaints and either promptly correct its report or submit a detailed explanation indicating the reasons why it disagrees; and where the Commission finds that a provider has intentionally and persistently submitted erroneous data, it should impose a severe penalty.

Regarding the incorporation of location-specific data, which the Commission put off adopting in the *DODC Report and Order*, ACA Connects believes that, while it would be beneficial to have that information, there are important threshold issues to resolve, such as the definition of a serviceable location, and the cost to implement such a collection is almost certainly substantial for the Commission and for providers that do not have to file High Cost Service Broadband (“HUBB”) reports.⁴ The few ACA Connects members that have developed location-specific data for business purposes report the cost is magnitudes greater than for filing the current Form 477 collection and that it has taken years to develop this information. Accordingly, the Commission should proceed deliberately and undertake a benefit-cost analysis before adopting a location-specific collection.

Finally, because the Form 477 broadband deployment collection will diminish in value as polygon data are filed, ACA Connects proposes the Commission should sunset the collection two years after the DODC begins, unless it finds, after issuing a public notice, that the DODC is not performing as expected and the data collection by Form 477 is still required for important purposes.

II. ADDITIONAL TECHNICAL STANDARDS FOR FIXED BROADBAND REPORTING

In prior filings, ACA Connects explained that, while it supports adoption of polygons to improve the precision of identifying where fixed broadband is available, the Commission needs to account for the challenges smaller fixed broadband providers that are not required to file HUBB data face in complying with the new collection.⁵ Today, only a limited number of these

⁴ Fixed broadband providers subject to the HUBB collection (47 C.F.R § 54.316) would not face these challenges, since to ensure universal service funds they receive are properly spent, they are already required to submit to the Commission reports that include the latitude/longitude coordinates of locations (47 C.F.R. § 54.320).

⁵ See, e.g., Ex Parte filing from Thomas Cohen and J. Bradford Currier, Counsel for the American Cable Association, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10, at 7 (Oct. 19, 2018). In the *FNPRM*, the Commission noted that Connected Nation expressed a similar concern. *FNPRM* at para. 78 (“[S]mall service providers...will struggle...unless they get assistance in creating their broadband coverage polygons.”).

smaller fixed providers produce (or have software with the capability of producing) polygons. The reason is straightforward: the cost to produce and then maintain the polygons is significant and they serve no business imperative. To comply with the DODC, smaller providers would work from either their “homes passed” database, digital or paper network map, or a combination of the two – and they are likely to use third parties to assist them. Most smaller providers seeking to create polygons from a “homes passed” database would contract with a third party to perform the conversion at a cost per submission of approximately \$7,500, including the software license. A smaller provider that only has a paper network map would need to get a third party to digitize the map, which would increase the initial cost to about \$10,000. Then, once this conversion into polygons occurs, the provider would need to check the results, make any corrections, and then submit the report. In addition, the provider would need to respond to crowdsourced filings.⁶ ACA Connects, therefore, is encouraged that the Commission in the *FNPRM* explicitly recognizes that it will need to assist smaller providers by providing help desk support and clear instructions, and seeks comments on additional measures it should adopt.⁷ To that end, ACA Connects recommends the following.

⁶ Later in these comments, ACA Connects discusses how the Commission should ensure it obtains quality data and enforces its collection. In brief, ACA Connects submits that the Commission should primarily rely on encouraging providers to report detailed and accurate information and should facilitate this process – as opposed to relying on an intensive enforcement regime. There are many reasons for ACA Connects recommending this approach. For instance, a provider’s homes passed database is constantly in flux as its network evolves and homes are built and demolished and as providers find addresses may be incorrectly entered or not reflect actual locations. Errors therefore happen “in the normal course of business,” and it is through updated data reported by providers, crowdsourcing, and challenge processes that the Commission will gain more accurate polygons. In other words, the collection is a process, and a provider should not be sanctioned for reports when it is not intentionally and persistently submitting erroneous data.

⁷ *FNPRM* at para. 78. See also, H.R. 3162, the Broadband Data Improvement Act of 2019, introduced by Representative Rodgers, which directs the Commission to collect broadband coverage data in shapefile format and authorizes expenditures of approximately \$30 million annually by the Commission for a third party to, among other things, “provide geographic information system data processing assistance to providers that require assistance.”

A. Relief for Very Small Fixed Providers

In the *DODC Report and Order*, the Commission directs the Wireline Competition Bureau (“WCB”) to determine whether to give very small fixed providers additional time to file their initial reports.⁸ ACA Connects submits there is good reason to give very small fixed providers additional time to file their initial reports. As ACA Connects explained in its July 24, 2019 *ex parte*,⁹ very small fixed providers who are not filing HUBB data do not have personnel that could be dedicated to overseeing the collection and the work of third parties and to reporting the polygons. They, therefore, will need to pull people from ongoing work, hire outside consultants and counsel, or potentially do both. While WCB cannot eliminate this problem entirely, it can lessen the concern by giving these providers an additional six months to comply, which will permit them to adjust the workload of their employees and learn from the experiences of providers that have already filed. Further, because these providers cover only a small percentage of broadband locations and the additional time is so limited, any such delay will have at most a *de minimis* impact on the value of the new collection.

As for the definition of a very small fixed provider, the Commission suggests that such provider have “less than 250 subscribers.”¹⁰ ACA Connects asserts this amount does not account for the challenges that somewhat larger providers would face, and it should be increased. Based on many discussions with its members over the years, ACA Connects understands that, as a rule, providers with fewer than 1,500 subscribers do not have staff dedicated solely to regulatory compliance or cannot afford to hire consultants or counsel to handle this work and thus cannot expeditiously undertake the new collection without sacrificing

⁸ *DODC Report and Order* at para. 17.

⁹ Ex Parte filing from Thomas Cohen and J. Bradford Currier, Counsel to ACA Connects, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10, *et al.*, at 6 (July 24, 2019) (“ACA Connects July 24th Ex Parte”).

¹⁰ *DODC Report and Order* at para. 17.

work on other projects. Further, any downside from increasing the threshold would be minor and temporary. ACA Connects, therefore, requests that the Commission define very small fixed providers for the purposes of allowing additional time to file their initial DODC reports as those with fewer than 1,500 subscribers.

B. Fixed Provider GIS File Formats

In the *DODC Report and Order*, the Commission directs the Office of Economic and Analytics (“OEA”) to “set the GIS file format(s) and data type that it ultimately determines are most advantageous for broadband reporting, while taking into account the potential burdens on filers.”¹¹ ACA Connects appreciates the Commission amending its earlier draft and directing OEA to weigh the benefits and costs in determining DODC file formats and data type. No doubt, it would simplify the Commission’s task if all providers file their polygons in a single file format, e.g., in the proprietary ESRI file format. However, as ACA Connects explained in many prior filings,¹² the cost to purchase software to produce polygons in the ESRI file format is significant. Even many of the smaller providers that today have the capability to produce polygons only do so in KMZ file format, which relies on free access to Google Earth. ACA Connects, therefore, requests that the Commission permit providers with fewer than 100,000 subscribers to file in the KMZ or other file format.¹³ ACA Connects also requests that the Commission ease restrictions for these smaller providers associated with the inclusion of attributes of polygons. ACA Connects’ recognizes that its proposal will place a burden on the Commission to convert polygons filed in different formats into a single format in issuing reports; however, the Commission should be able to accomplish this task by purchasing software more

¹¹ *Id.* at para. 15, n. 29.

¹² See, e.g., ACA Connects July 24th Ex Parte at 5-6.

¹³ ACA Connects notes that broadband mapping legislation introduced in Congress -- S. 1822 and H.R. 4229 (the Broadband Deployment Accuracy and Technological Availability Act) -- provides assistance to providers with fewer than 100,000 broadband connections.

cost effectively than hundreds of smaller providers making individual purchases. As a possible alternative, the Commission may wish to investigate whether it can purchase a bulk license that would enable smaller providers to file in the ESRI format.

C. Creating “Consistent” Fixed Broadband Polygons

In the *FNPRM*, the Commission, in seeking to develop a “single cohesive dataset” indicating where fixed broadband service is available, asks whether it should adopt prescriptive rules “that will provide consistently reliable results for similarly-situated filers,” even while recognizing “that determining the area served by a broadband network is highly idiosyncratic and determined by multiple factors.”¹⁴ ACA Connects appreciates the Commission’s desire to limit post-processing work by having providers report data according to similar methods. However, highly prescriptive rules, while potentially providing greater certainty for providers, can impose undue burdens on them, for instance, by requiring providers to take the time and incur the cost to regularly “walk their networks.” This is especially the case with the DODC because it is a completely new undertaking and neither the Commission nor providers are certain what issues may arise as polygons are created. ACA Connects, therefore, proposes at this time that the Commission eschew adopting restrictive mandates about how to report broadband coverage. Rather, the Commission should indicate that, in reporting polygons, providers first can rely on their homes passed databases or network maps so long as they make good faith efforts to ensure they are reasonably accurate and second can make predictive judgments about where service is available and the performance attributes for such service so long as their judgments are reasonable. The Commission can then use crowdsourcing and challenge processes to make a provider’s polygons more granular and accurate. And, as it undertakes

¹⁴ *FNPRM* at para. 79.

this work, the Commission can, where necessary, develop and issue guidelines that all providers can use.

D. Reporting Latency Levels

The Commission notes that it finds broadband service latency to be relevant in awarding universal service support and inquires whether fixed broadband providers should be required to report the latency level for each polygon.¹⁵ Smaller broadband providers have found that many subscribers, particularly online gamers and video conference users, want access to low latency service, and thus it is an important performance attribute. As such, ACA Connects supports including latency in providers' reports. Further, we believe latency should be measured either pursuant to the methodology used in the Commission's Measuring Broadband America ("MBA") program – the round-trip time from the consumer's premises to the closest measurement server and back¹⁶ – or for all-fiber or DOCSIS 3.x network providers, according to the access equipment specifications since the MBA program has consistently found that latency levels for such network technologies are very low.¹⁷

E. Ensuring Quality Data

The fundamental purpose of the DODC is for the Commission to receive high-quality data, especially so it can determine which areas are unserved. To that end, the Commission asks for comment on ways to encourage providers to produce reliable broadband coverage

¹⁵ *Id.* at para 81.

¹⁶ See *Eighth Measuring Broadband America Fixed Broadband Report*, Federal Communications Commission, Office of Engineering and Technology, Section 2.D (Dec. 14, 2018) available at <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-eighth-report> (last accessed Sep. 23, 2019).

¹⁷ *Id.* S. 1822 and H.R. 4229 include latency measurements in the collection.

reports.¹⁸ The Commission also intends to institute an enforcement regime to ensure providers “conduct thorough assessments of service availability.”¹⁹

Like the Form 477 broadband deployment collection, the DODC is a mandatory collection to serve an important objective of the Commission – closing the digital divide²⁰ – but it does not give a direct benefit to the provider submitting data.²¹ The DODC also is a new collection, which is likely to tax the resources of providers, at least initially. Given these factors, ACA Connects believes that it will be much more productive if the Commission implements and enforces compliance with the collection by relying more on the “carrot than the stick.” Adopting such an approach will be especially important for smaller broadband providers, who will face challenges in understanding and complying with requirements to create and report polygons. Accordingly, ACA Connects appreciates that in the *DODC Report and Order*, the Commission has already directed OEA to provide clear filing instructions and make service-desk help available.²² In addition, the Commission should establish an education and compliance regime that includes, among other things, working with associations like ACA Connects to educate providers, giving sufficient time for providers to file their initial reports (including by accepting informal requests for extensions), and permitting providers to fix errors without penalty, except where the provider’s errors are intentional and persistent. These measures not only will assist providers in complying with the DODC but give the Commission a good indication about where

¹⁸ *FNPRM* at para 82.

¹⁹ *Id.* at para. 83.

²⁰ *DODC Report and Order* at para. 1.

²¹ The DODC thus stands in contrast, for instance, to the HUBB collection, where the Commission mandates that providers receiving high-cost support linked to deployment obligations file deployment data, including the latitude/longitude coordinates of locations. ACA Connects notes that, even for the HUBB collection, the Commission granted a waiver extending the initial filing deadline to allow smaller providers “newly collecting and reporting such information, additional time to gather, analyze for errors, file and finalize, and certify their broadband information.” See *Connect Am. Fund*, WC Docket No. 10-90, Order, 32 FCC Rcd 1445, para. 9 (WCB 2017).

²² *DODC Report and Order* at para. 23.

there are issues it should address, both of which will facilitate the Commission's receipt of high-quality data.

As for enforcement of the collection, while the Commission has already adopted a generic enforcement rule in the *DODC Report and Order*,²³ it needs to flesh out how this rule will be implemented. ACA Connects recommends the following three-stage enforcement regime,²⁴ which we discuss in greater detail in the next section on use of crowdsourcing.²⁵ First, where a consumer residing at the relevant location files a legitimate complaint alleging a provider has incorrectly identified a location as served, it should be treated like an informal complaint,²⁶ where the provider is given a reasonable time to address the issue through revised reporting or dispute the complaint. Second, where the WCB²⁷ finds there is a critical mass of legitimate complaints from consumers that reside in the relevant area that indicate a material and immediate concern about a distinct and similar issue, the provider should be given a limited time to review the complaints and either promptly correct its report or submit a detailed explanation indicating the reasons why it disagrees with the complaints.²⁸ Where the provider

²³ 47 C.F.R. § 54.1402(f).

²⁴ In addition to the stages discussed above, ACA Connects assumes the Commission would bring an enforcement action against a provider that fails to file a report.

²⁵ Because the Commission is collecting crowdsourced data in the DODC, ACA Connects does not believe there is an immediate need for the Commission to conduct spot checks of filers' reports. The Commission can adopt such a practice later if it finds that crowdsourced data are not working as intended to ensure reports are accurate.

²⁶ 47 C.F.R. §§ 1.716-1.718. As ACA Connects discusses later in these comments, to ensure the legitimacy of a complaint filed against a fixed service provider, it should be filed by the "affected" consumer. (As discussed below, if a bulk complaint is filed, each location in question should meet the qualifications for an individual complaint.) The Commission should use a challenge process to permit providers to contest the accuracy of locations.

²⁷ While the Universal Service Administrative Company ("USAC") may collect and track complaints, the Commission and not USAC should be responsible for enforcement actions, including determining whether there is a critical mass of complaints indicating a material and immediate concern, whether to investigate a dispute further, and whether a provider is in good faith in disputing complaints.

²⁸ See 47 C.F.R. § 0.91 (authorizing WCB to work on adjudicatory matters to advance Commission objectives, including to "promot[e] economically efficient investment in wireline telecommunications infrastructure"). Because there will be a learning curve for providers to

disputes the complaints, the WCB can investigate further where warranted – but, regardless, it should not impose a penalty on a provider that, in good faith, disputes the data. Third, where the Commission, after a thorough investigation consistent with current enforcement procedures, finds that a provider has intentionally and persistently submitted erroneous data, it should impose a severe penalty.²⁹ ACA Connects submits that by encouraging compliance but heavily sanctioning outliers, the Commission will foster a process that leads to the production of more accurate data.

III. USE OF CROWDSOURCING

In the *DODC Report and Order*, the Commission directs OEA to work with USAC to establish a portal where the public and others can review and dispute fixed providers' polygons.³⁰ In the *FNPRM*, the Commission asks how it should track and address public submissions and potential ensuing disputes with providers.³¹

As a threshold matter, it is essential that the Commission ensure that public submissions are credible, raising an accurate and legitimate complaint about a location or locations in a provider's polygon. ACA Connects thus supports having a complainant disputing coverage certify that she/he has requested service at the location where the complainant resides and

collect underlying data and report polygons, ACA Connects recommends that the Commission provide a much longer "grace period" for providers to address a critical mass of complaints about their initial reports. This will give providers time, not only to review their own data, but interact with complainants.

²⁹ The Commission asks whether it should adopt a "negligence" standard in enforcing the *DODC*. *FNPRM* at para. 83. Because the collection is new and because the Commission has yet to issue instructions and educate providers about the process, ACA Connects believes it is premature for the Commission to sanction a provider based on whether it "should have known" how to comply. Rather, the Commission should gain experience with the process and with providers' reports before determining whether such a lower evidentiary burden for enforcement should apply. Further, ACA Connects notes that S. 1822 and H.R. 4227 (Mapping Accuracy Promotes Services Act) sanction providers that "willfully, knowingly, or recklessly" submit inaccurate broadband coverage information, underscoring the need for a high evidentiary burden for assessing alleged reporting violations.

³⁰ *DODC Report and Order* at para. 18.

³¹ *FNPRM* at paras. 89-98.

service for the location in question has not been provided within 10 business days of the request.³² The complainant should be required to provide proof of residence. As for complainants disputing performance (e.g., speed), they should provide evidence they have service from the provider, such as by providing a recent bill, have run industry-standard tests from their modem to the network at peak and other times over a period of a week or longer and should identify the application they used to conduct the test. Further, ACA Connects agrees with the Commission's proposal that complainants provide, in addition to their contact information, the tested location's address and other location-related information,³³ the identity of the fixed provider, the relevant service tier and related performance attributes, and the network technology.³⁴ Where any of these key data points are missing, USAC should inform the complainant and provide instructions on how they can be addressed.

Once a complaint is certified as being accurate and complete by USAC, ACA Connects proposes the Commission establish the following process:³⁵

Complaint for an Individual Location -- Where there is an individual complaint

asserting a significant error exists for reported data for a particular location, USAC

³² *FNPRM* at para. 91. Each individual complaint that a third party (e.g., a government entity or public interest group) may wish to bundle with other complaints and file in bulk should meet the requirements proposed herein for an individual complaint. *Id.* at para. 97.

³³ Much of this information will be contained in a complainant's recent bill. The Commission should permit the complainant to redact any information it does not want to share with the providers, so long as all relevant information is given to the provider.

Because an address may not indicate whether a location is proximate or some distance away, it would be helpful for the complainant to provide geolocation information. However, it should not be mandatory, at least initially. A complainant, however, should be required to indicate whether the location is not proximate to the location of the mailbox, as often can be the case in rural areas. This information is material to whether or not service was provided, especially for a cable operator where the franchise does not require service in more remote areas of a franchise territory. In addition, while geolocation information may be useful for certain fixed providers, the Commission should recognize that smaller providers are unlikely to have this information and thus will not find it useful.

³⁴ *Id.* at para. 91.

³⁵ As for USAC's tracking system, USAC should log the complaint, the notice date to the provider, and whether the provider has corrected the data or disputed the complaint.

should inform the provider and indicate that the provider should, within a reasonable time, either fix the error to the maximum extent practicable³⁶ and inform USAC³⁷ or file a response disputing the complaint with USAC.³⁸ Where the provider disputes the complaint, USAC should inform the complainant and indicate that the complainant can submit additional information to support its allegation.³⁹

Critical Mass of Complaints -- Where there is a critical mass of complaints indicating a material and immediate problem exists about a distinct and similar issue in the reported

³⁶ In addressing and fixing an error in response to a complaint, a provider should make a good faith effort to determine whether the problem it is addressing has resulted in other errors in its report.

³⁷ The Commission asks whether a provider should not only fix currently filed data but past reports as well. *Id.* at para. 94. ACA Connects recommends that, for now, the Commission only require a provider to fix its current report because of the time and expense required to amend prior filings and because the Commission is most likely to capture the benefit of any correction in awarding universal support going forward. Once it gains experience with the collection, the Commission can reevaluate the benefits and costs and determine whether to amend this approach.

³⁸ ACA Connects proposes that the Commission presume that a reasonable time for a response would be no later than six months from the date the provider receives a complaint. In the *DODC Report and Order*, the Commission adopted a new rule (47 C.F.R. § 54.1402(e)) that requires providers to file a revised version of their report “if they discover a significant reporting error in their data,” but the rule does not mandate the timing for that filing. In addition, new section 54.1401 requires providers to update their data within six months of such events as completing or discontinuing a deployment. 47 C.F.R. § 54.1401. ACA Connects believes that it would be consistent with these new rules for the Commission to adopt a presumption that a provider should correct a significant error within six months of receiving data indicating an error (assuming it does not dispute the data). By contrast, as discussed in the ensuing paragraph above, where there is a critical mass of complaints indicating a material and immediate concern regarding data accuracy, ACA Connects believes the provider should be required to address that within 60 days.

³⁹ A complainant also can decide to file a formal complaint pursuant to 47 C.F.R. § 1.720 *et seq.*, but this is unlikely for a single location given the expense and time required for such a filing. ACA Connects also opposes proposals raised in the *FNPRM* to establish a more elaborate dispute resolution process. *FNPRM* at para. 95. As discussed above, the collection, while mandatory, is a new undertaking and is not linked to a provider’s receipt of universal service funding. For those reasons, the Commission should rely more on providing incentives to comply and should deal with complaints through a process similar to the current informal complaint process, except where a formal complaint is filed or there is evidence indicating further investigation and enforcement by the Commission is warranted. Further, in no event should USAC be placed in the position of determining how to address conflicting claims, let alone adjudicating them. USAC has no experience dealing with these issues; these are tasks for the Commission. See H.R. 4229, Sec. 6(c) (explicitly forbidding the Commission from delegating any responsibilities assigned to it under the Communications Act to USAC).

ACA Connects recommends that complaints, provider responses, and any subsequent filings be handled electronically.

data from a provider, USAC, after consultation with and assent from the WCB, should inform the provider and indicate that, within 60 days, the provider should inform the WCB and USAC that it either has fixed the errors or disputes the complaints. Where a provider disputes the complaints, the WCB (and not USAC) can decide whether to investigate further. In addition, a complainant can decide to file a formal complaint under existing Commission procedures.⁴⁰

Finally, whenever the Commission has sufficient reason to believe a provider has intentionally and persistently filed inaccurate data, it should investigate further and bring a formal enforcement action.

IV. INCORPORATING LOCATION INFORMATION

In the *DODC Report and Order*, the Commission adopted a “multi-faceted approach” to collecting more granular and accurate broadband coverage data, beginning by collecting “polygons” and then incorporating location-specific data informed by input received in the *FNPRM*.⁴¹ The Commission decided to delay development of a location-specific database because, it will, as ACA Connects argued, “impose substantial costs and complexity on fixed broadband providers, especially smaller providers, and will take significant time to complete.”⁴² The *FNPRM* seeks comment on the approach of overlaying “polygons” on location data to precisely identify served and unserved locations.⁴³

⁴⁰ While ACA Connects’ approach for both of these types of complaints “could leave the original data possibly in place for many months even after an agreement that the original filing was in error,” we believe it strikes a reasonable balance between the benefits of having up-to-date data with the burdens imposed on providers. *FNPRM* at para. 93.

⁴¹ *DODC Report and Order* at para. 30.

⁴² *Id.* at para. 31 (citing Ex Parte filing from Thomas Cohen and J. Bradford Currier, Counsel to ACA Connects, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10, at 2-3 (Feb. 25, 2019)).

⁴³ *FNPRM* at para. 99.

ACA Connects appreciates the value of incorporating location-specific data into the DODC and all the work done by the Broadband Mapping Consortium (“BMC”) on testing the concept.⁴⁴ To ACA Connects, the real questions involve not whether to incorporate location-specific data, but, as the *FNPRM* indicates, how to do so. The Commission well understands that adopting such an approach involves the resolution of difficult issues (e.g., determining the definition of a “location”⁴⁵), will take time to establish, and, importantly for the Commission and fixed providers, is not inexpensive. As such, and as explained further below, the Commission cannot yet determine the parameters of a location-specific collection and the time it will take. Accordingly, it should proceed deliberately and should not hold up establishment of the portal for filing polygons.⁴⁶

Even as the BMC declares its pilot a success,⁴⁷ its filings upon closer inspection indicate that full implementation of a location-specific approach will still need to clear many hurdles. As the BMC Report correctly recognizes, any broadband coverage collection is only as good as the underlying data,⁴⁸ and it finds there are numerous shortcomings in that underlying data. For instance, if addresses are used as the underlying data, the BMC Report explains that there are

⁴⁴ S. 1822 and H.R. 4229 direct the Commission to establish the Broadband Serviceable Location Fabric, which shall contain geocoded information for where fixed broadband service can be installed.

⁴⁵ *FNPRM* at paras. 101-105. For example, in para. 102, the Commission discusses the challenges with determining a location in a Multi-Tenant Environment and, in para. 104, it notes that multiple “location” errors are possible, which might lead to a location getting or not getting universal service support.

⁴⁶ *Id.* at para. 110. Even after a location-specific collection is adopted, the Commission can only truly ensure the accuracy of the data by conducting a challenge process, which will verify the accuracy of the provider’s report.

⁴⁷ “Broadband Mapping Initiative: Proof of Concept,” Jim Stegeman, President/CEO, CostQuest Associates, at 4 (Aug. 2019) (“BMC Report”). See Letter from Jonathan Spalter, President & CEO, USTelecom – The Broadband Association, *et al.*, WC Docket Nos. 19-195, 19-126, 11-10, 10-90 (Aug. 20, 2019) (attaching BMC Report).

⁴⁸ *Id.* at 5.

addresses “unknown to carriers” and that “cannot be georeferenced.”⁴⁹ In addition, “addresses are not maintained to the same standard, creating quality and matching challenges,” and there are open questions about how textual addresses are “converted to an exact location on the earth’s surface.”⁵⁰ If polygons are used, there are challenges based on whether the polygons are based on addresses, plant records, or internal customer locations.⁵¹ As a result, the BMC Report makes a series of recommendations to address the “lessons learned,” including that addresses should be standardized, a standard classification should be adopted by tax assessors to describe land use, and a standard definition for broadband serviceable structure should be created.⁵² In addition, even where addresses and polygons may have validity, there are issues with geolocating that information. For instance, USTelecom just informed the Commission that “its members report a substantial degree of geocoordinate variability based upon which commercial mapping vendor the carrier uses,”⁵³ which would decrease the value of the collection.

There also is a question about the cost of implementing the location-specific data collection for the Commission and providers. The BMC submits that the initial cost to develop the approach would be between approximately \$8.5-11 million and \$22-24.5 million, and the ongoing annual cost would be between approximately \$3-4 million and \$7-8 million – with the cost being lower if provider proprietary data instead of open source data could be used.⁵⁴

⁴⁹ *Id.* at 49.

⁵⁰ *Id.*

⁵¹ *Id.* at 50.

⁵² *Id.* at 13, 52, 56.

⁵³ Letter from Mike Saperstein, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 19-195, 11-10, at 1 (Sep. 4, 2019) (“[T]he geocodes generated by commercial geocoding software used by participating carriers are frequently more than 10 meters away from the location of the served structure.”).

⁵⁴ BMC Report at 13. ACA Connects is uncertain of the basis for these cost estimates and recommends the OEA undertake its own assessment.

However, even assuming these costs are reasonably accurate, nowhere does the BMC indicate the cost to providers to create the proprietary location data. While this should be low for providers that are already required to file geolocation data in their HUBB reports, it will be substantial for other fixed providers. One of ACA Connects larger members that created a geolocation database for network operations and maintenance purposes reported that it took over one year to establish at a cost of approximately \$2 million. A smaller member, which also sought to create a geolocation database for business purposes, reported that it took five years for two full-time employees to create a geolocation database – at a cost of about \$500,000 – and that, in addition to this amount, the initial software cost was \$50,000 and the ongoing annual cost is \$10,000. This work is so expensive and time-consuming because providers need to “walk their network” to precisely identify and geolocate locations where service is available and then they need to enter the data and confirm the entries in new software they must purchase or lease. And, because networks expand and contract and locations are created and torn down, to ensure reports are accurate, a provider needs to undertake this process at least annually. Assuming an average smaller provider spends only \$100,000 upfront – a still large sum – the total cost for 500 smaller providers would be \$50 million. Assuming the ongoing annual cost is \$10,000, the total would be \$5 million. By any measure, these high costs should concern the Commission. ACA Connects notes that Congress appears concerned about these high costs and that both S. 1822 and H.R. 4229 require the Commission to assist providers with fewer than 100,000 broadband subscribers “with respect to geographic information system data processing.”⁵⁵ Accordingly, ACA Connects urges the Commission to conduct a benefit-cost analysis before implementing a location-specific collection and then, if it proceeds, provide sufficient flexibility and assistance for smaller providers.

⁵⁵ See S. 1822, Sec. 5(d); H.R. 4229, Sec. 4(d).

V. SUNSETTING FORM 477

In establishing the DODC, the Commission decided that it should continue to collect Form 477 census block broadband deployment data because it “will continue to be a useful reference point for its existing purposes” and the DODC.⁵⁶ ACA agrees. Even with the best of intentions, it will take time to develop the DODC portal⁵⁷ and get approval from the Office of Management and Budget for the DODC.⁵⁸ In the meantime, the Commission will need deployment data to award Rural Digital Opportunity Fund support⁵⁹ and potentially for other purposes. Further, providers are well-accustomed to supplying census block deployment data and thus incur relatively low costs. Therefore, on balance, the benefits of continuing the collection outweigh the costs.

At the same time, when the DODC is firmly established, as the Commission notes, the DODC “will largely displace the Form 477 process,”⁶⁰ and, in the *FNPRM*, it seek comment on when this should occur. Throughout these comments, ACA Connects has explained that, even after the Commission begins the collection, smaller fixed providers will need additional time to understand and comply with creating and reporting the data and responding to complaints. The Commission too may find it needs to make material adjustments in the collection, which may in turn force providers to undertake additional efforts to comply. Thus, the Form 477 broadband deployment collection should not sunset immediately upon the date the DODC begins.

However, after the Commission has access to the DODC data for a reasonable period, the Form 477 deployment data will diminish in value, outweighed by the data collection costs, and

⁵⁶ *DODC Report and Order* at para. 11.

⁵⁷ *Id.* at para. 15.

⁵⁸ 44 U.S.C. § 3501 (Paperwork Reduction Act of 1995).

⁵⁹ *Rural Digital Opportunity Fund, Connect Am. Fund*, WC Docket Nos. 19-195, 10-90, Notice of Proposed Rulemaking, FCC 19-77, at para. 45 (Aug. 2, 2019).

⁶⁰ *FNPRM* at para. 135.

thus it should be shut down. ACA Connects proposes the Commission determine now that a reasonable period would be two years after the DODC begins, unless it finds, after issuing a public notice, that the DODC is not performing as expected and the data collection by Form 477 is still required for important purposes.

VI. CONCLUSION

ACA Connects believes the DODC will materially improve the Commission's access to granular and accurate broadband coverage information, helping it to identify those unserved areas where the Commission and other government agencies should provide support to bridge the digital divide. In these comments, ACA Connects has proposed measures to implement the DODC by encouraging fixed broadband providers to file high-quality deployment data and be responsive to complaints about their submissions. By taking this approach, the Commission will best ensure the DODC's success.

Respectfully submitted,

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